



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants:	Bruce Eisen et al.		
Assignee:	User Trends, Inc.		
Title:	Electronically Distributing Promotional and Advertising Material Based Upon Consumer Internet Usage		
Serial No:	09/379,167	Filing Date:	08/23/99
Examiner:	John L. Young	Group Art Unit:	3622
Docket No.:	M-7729 US	Appeal No:	2005-1659

**REPLY BREIF – REPLACEMENT COPY OF EXHIBIT 3**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Enclosed please find a replacement copy of Exhibit 3 for the above-referenced matter.

Recently we noticed that the Declarations of Bruce Eisen and James Fedolfi, attached as Exhibit 3, were missing information initially included in the original copies forwarded to the Examiner on November 15, 2002 during the prosecution of this matter. We have remedied the inconsistencies and for your convenience have enclosed copies of the original submission.

If you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Jason Far-hadian".

F. Jason Far-hadian, Esq.  
Reg. No.: 42,523



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Examiner:	John L. Young	Group Art Unit:	2162
Docket No.:	M-7729 US		

Assistant Commissioner of Patents  
Washington, D.C. 20231

**DECLARATION OF BRUCE EISEN**

I, Bruce Eisen, the undersigned declare as follows:

1. I am the President and CEO of UserTrends corporation. UserTrends is a privately held company headquartered in Los Angeles, California, which has developed proprietary e-mail marketing personalization solutions for both traditional and online retailers.
2. I have been in the email marketing industry for approximately four years. In my capacity as the President and CEO of UserTrends, I make decisions involving product development, market research, business models and strategies as well as determining the vision and direction of Usertrends both financially and in product marketing. Based on my background and experience in the industry, the scope of my duties as the President and CEO of UserTrends, my personal experience with UserTrends technology, and my knowledge of other technologies in the email marketing industry, I provide you the following professional opinion.
3. UserTrends data collection tools help companies learn about and precisely target individual customer interests. These solutions enable marketers to generate higher response rates to promotions, save on marketing costs, and increase sales and profits—all, while building a loyal customer base.

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4. UserTrends' technology is different from cookie profiling and other email consumer profiling technologies for the following reasons: (1) UserTrends' technology accurately profiles a particular individual's interests and preferences by focusing on a known identifier associated with that particular individual, rather than using unanimous identifying means (i.e., a cookie) typically associated with a computer used by the individual, (2) UserTrends' technology does not require storage of a unique identifier on the client computer at any time and therefore does not require use of a certain "cookie handling feature" provided in a browsing software, (3) UserTrends' technology does not require authorized access to the client computer to retrieve information in a cookie file, (4) because of the above advantages implementation of UserTrends' technology requires substantially less resources and no or minimal customization and is substantially less expensive, and (5) UserTrends' technology does not burden the targeted audience to go through a lengthy or inconvenient registration process.

5. Competing electronic consumer profiling technologies generally capture individual data via an unfriendly registration process or by requiring a visitor logging in to the site or making a purchase. The e-marketing industry has generally used such data for mass direct marketing campaigns. In the case of data collected through a lengthy registration process, which only reveals a consumer's interest at a *particular moment* in time, aggregate profiling is usually necessary to determine what promotions to send the consumer.

6. Various competing profiling methods and their disadvantages when compared to UserTrends' technology are provided below:

Purchase Profiling - While purchase profiling is an accurate way of determining one interest of a customer, it isn't able to relate the customer's interests with other products they looked at but did not purchase. UserTrends' technology doesn't require a purchase or input of sensitive financial information to collect behavior data.

Registration Profiling - This requires individuals to take the time to fill out a long survey to provide marketers with some data regarding their particular interests. Unfortunately, the accuracy and reliability of such collected data are often questionable. These surveys can also often fail to weigh customer interests and only represent interests at one remote

instance – although interests change, registrations remain the same. UserTrends' technology does not require a burdensome registration and allows updating users' interest data based on each individual user's activities on various web pages.

Cookie Profiling – Although many websites employ cookie technology to capture some group and individual data, the identity of the website user remains anonymous. This is because a cookie can be only associated with a computer system and not an individual. Those who regard cookies as invasive erase them or block a web server from storing cookies on their computers. This makes it difficult, if not impossible, for marketers to acquire a consistent and individual profile. Without the need for cookies or the need for accessing client computer, UserTrends' technology collects, identifies, and tracks individual data transparently for profiling and marketing purposes.

7. In particular, cookie profiling technology requires modification and customization of websites so that web servers can successfully access and store a cookie on an end user's computer. Further, customization and modifications are required to accommodate the cookie handling features of various browser applications used by an end user so that the cookie profiling technology could work effectively across all systems and platforms. Customization of each website or web server is associated with high professional service fees and requires more sophisticated computing resources (e.g., software and hardware).
8. UserTrends' technology simply relies on preexisting email-associated resources and uses an email campaign that does not rely on customized web sites, sophisticated web servers, cookies or compatibility with cookie handling features of various browsers to collect highly individualized data. All that is required is an individual's email address and the individual's capability to receive email. The simplicity of UserTrends' technology provides a very efficient profiling technology that has convinced many UserTrends' clients to abandon other costly methodologies and solutions used previously.
9. The data collected via a cookie profiling technology cannot be directly associated with a particular user or email because a cookie profiling technology only provides information about the computer used and not the particular user. Where more than one individual uses the same

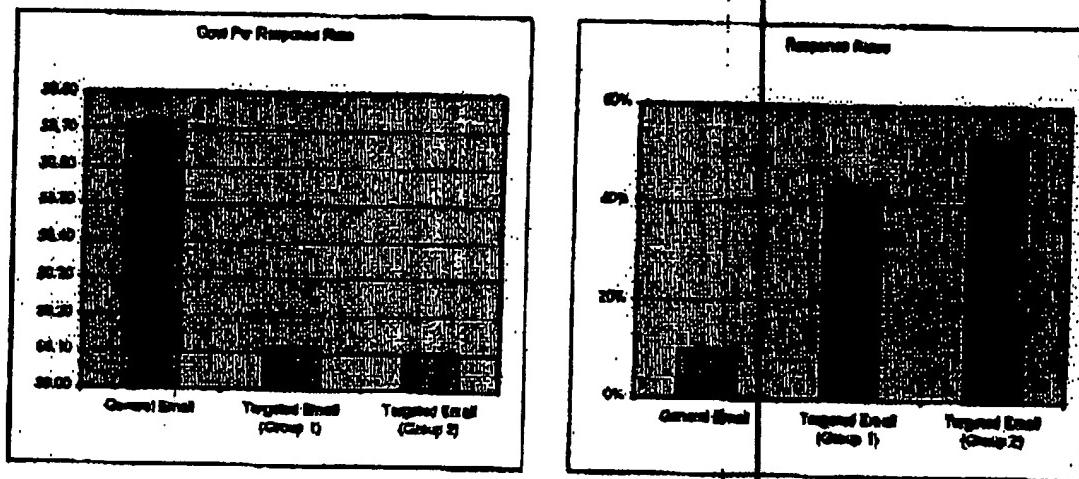
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computer, or where an individual uses more than one computer, cookie profiling technology does not provide accurate behavior patterns that are so valuable for targeted marketing.

10. UserTrends' technology allows association of an email campaign data to each individual's email address and does not depend on anonymous data (i.e. data that provides an association of behavior to a specific computer rather than to an individual). Our studies have shown that as a direct result of using UserTrends' technology higher response rates and conversion rates have been achieved from email campaigns by our clients over time as illustrated in the following charts.



11. Other email marketers have failed in targeting promotions to demonstrated web-site behavior down to the individual and therefore cannot accurately individualize the result of the information gathered from monitoring user movement on the Internet. UserTrends' technology addresses this long-felt need to solve the above deficiencies and problems. Utilizing UserTrends' technology targeted email promotions to individuals can be achieved, instead of executing mass marketing campaigns or marketing to large groups.

12. Utilizing UserTrends' technology has reduced professional service requirements of UserTrends' clients by more than 50%. This cost saving and efficiency in particular is due to ease of implementation and use of the UserTrends' technology because it does not require special "customization" of server systems and website servers that other cookie or registration profiling technologies require.

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13. UserTrends has negotiated and is currently negotiating licensing arrangements with a number of current clients and other email marketing vendors to license UserTrends' proprietary technology. Majority of the license agreements are to vendors who "resell" the technology to their clients. Cable and Wireless (CWP), Xpedite (PTEK), Boldfish, and eContacts are among the vendors who have used UserTrends technology and have licensed or are considering licensing the technology. Many clients of these vendors have already used UserTrends' technology. These clients include HP, Compaq, Hawaiian Airlines, One World Networks, and CarrierPath.

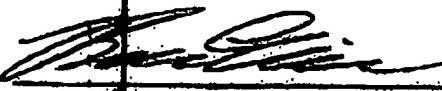
14. The above information provides objective evidence of unexpected results, commercial success, the ability to meet a long-felt need where others have failed, and other factual evidence in relation to UserTrends' technology, such as licensing activities. This evidence when considered collectively indicates that UserTrends technology has been used to provide a distinct and novel solution to overcome an insoluble problem associated with the older electronic profiling technologies discussed above.

15. I hereby declare that all statements made herein are of my own knowledge and true and that all said statements are made on information and belief and are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code,<sup>1</sup> and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: November 14, 2002

By:

  
C. O'BRIEN, USCRKRCB005

<sup>1</sup> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully -

(1) fabricates, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined under this title or imprisoned not more than 5 years, or both.

(b) Subsection (a) does not apply to a party to a judicial proceeding, or the party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

(c) With respect to any matter within the jurisdiction of the legislative branch, subsection (a) shall apply only to -

(1) administrative matters, including a claim for payment, a matter related to the procurement of property or services, personnel or employment practices, or support services, or a document required by law, rule, or regulation to be submitted to the Congress or any office or officer within the legislative branch; or (2) any investigation or review, conducted pursuant to the authority of any committee, subcommittee, commission or office of the Congress, consistent with applicable rules of the House or Senate.

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Assignee:	User Trends, Inc.
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Docket No.:	M-7729 US

Filing Date: 08/23/99  
Group Amt: 2162

Assistant Commissioner of Patents  
Washington, D.C. 20231

**DECLARATION BY JOHN L. YOUNG**

I, John L. Young, the undersigned declare as follows:

1. I am the Vice President of eContactz corporation. eContactz is an international email marketing company with a place of business in Cambridge, Massachusetts and Dublin, Ireland. eContactz provides enabling solutions to companies involved in email marketing. Our clients include Fortune 500 companies (e.g., Sprint, Gateway Computer, etc.) in a variety of industries.
2. I have been in the email marketing industry with eContactz for approximately 4 years. In my capacity as the Vice President of eContactz, I make decisions involving the purchase, licensing, and utilization of technological tools to advance and promote eContactz' business and scope of influence in the current highly competitive electronic economic market. In that capacity, I am also involved in the management of business and financial operations of eContactz and oversee the development and success of eContactz and its client's marketing campaigns and evaluate the efficiency and effectiveness of technological tools used to achieve the same. Based on my background and experience in the industry, the scope of my duties as the Vice President of eContactz, my personal experience with UserTrends technology, and my knowledge of other technologies in the email marketing industry, I provide you the following professional opinion.

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3. eComcast has been using UserTrends' proprietary electronic consumer profiling technology since 2000. eComcast has reviewed, and continues to review, other electronic profiling technologies to track particular consumer interests and profiles. Among all the technologies reviewed by eComcast, UserTrends' technology was most the efficient and effective in providing our email marketing clients with a solution for profiling small respondents with site behavior and targeted email campaigns.
4. UserTrends' technology is unique and superior to the other solutions and technologies we have used for the following reasons: (1) UserTrends' technology provides email marketers with data that cannot be otherwise collected with use of cookies (2) implementation of UserTrends' technology requires substantially less resources, (3) UserTrends' technology can be implemented with ease requiring no or minimal customization, (4) integration and use of UserTrends' technology is substantially less expensive than the other competing products in the market, (5) UserTrends' technology does not burden the targeted audience to go through a lengthy or inconvenient registration process, (6) UserTrends' technology accurately profiles a particular individual's interests and preferences by focusing on a known identifier associated with that particular individual, rather than using anonymous identifiers or means typically associated with a computer used by the individual.
5. Competing electronic consumer profiling technologies generally capture individual data via an unfriendly registration process or by requiring a visitor logging in to the site or making a purchase. The e-marketing industry has generally used techniques for these direct marketing campaigns. In the case of data collected through a lengthy registration process, which only reveals a consumer's interest at a particular moment in time, aggregate profiling is usually necessary to determine what promotions to send the consumer. The following provides a list of various competing profiling methods and their disadvantages when compared to UserTrends' technology:

**Purchase Profiling** - While purchase profiling is an accurate way of determining new interest of a customer, it isn't able to relate the customer's interests with other products they looked at but did not purchase. UserTrends' technology doesn't require a purchase or input of sensitive financial information to collect behavioral data.

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PAGE 03

Registration Profiling - This requires individuals to take the time to fill out a long survey to provide marketers with some data regarding their particular interests. Unfortunately, the accuracy and reliability of such collected data are often questionable. These surveys can also often fail to weigh customer interests and only represent interests at one specific instance - although interests change, registrations remain the same. UserTrends' technology does not require a burdensome registration and allows updating user's interest data based on each individual user's activities on various web pages.

Cookie Profiling - Although many websites employ cookie technology to capture some group and individual data, the identity of the website user remains anonymous. This is because a cookie can be only associated with a computer system and not an individual. Those who regard cookies as invasive erase them or block a web server from storing cookies on their computers. This makes it difficult, if not impossible, for marketers to acquire a consistent and individual profile. Without the need for cookies, UserTrends collects, identifies, and tracks individual data transparently for profiling and marketing purposes.

6. Cookie profiling technology requires clients to modify and customize their websites so that their web servers could successfully access and store a cookie on an end user's computer. Further, customization and modifications are required to accommodate the cookie features of various browser applications used by an end user so that the cookie profiling technology can work effectively across all systems and platforms. Customization of each website or web server is associated with high professional service fees and requires more sophisticated computing resources (e.g., software and hardware). Where more than one individual uses the same computer, or where an individual uses more than one computer, cookie profiling technology does not provide accurate behavior patterns that are so valuable for targeted marketing.
7. UserTrends' technology simply relies on predicting email-associated resources and uses an email campaign that does not rely on customized web sites, sophisticated web servers, cookies or availability of cookie handling features of various browsers to collect highly individualized data. All that is required is an individual's email address and the individual's capability to

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receive email. The simplicity of UserTrends' technology results in a very efficient profiling technology.

8. UserTrends' technology will allow us to associate email campaign data to each individual's email address and not depend on anonymous data (i.e., data that provides an association of behavior to a specific computer rather than to an individual). Combined with e-Contact's sequential email methodology (sending multiple targeted follow up emails using smart frequency algorithms and business rules) we can achieve 50% to 75% higher response rates from email campaigns. UserTrends' technology allows us to target promotions to individual preferences and demonstrated interests.

10. UserTrends' clickstream tracking technology will be a cornerstone of our new email management platform scheduled for release in Q103. eContact pre-call surveys show that the capabilities provided by UserTrends are in demand for early adopters of email marketing technology. We fully expect to win business away from our competitors who cannot bring added value to the email marketers by providing them with highly individualized consumer data.

11. Utilizing UserTrends' first stage click-tracking and campaign management technology, allowed us to reduced our professional service requirements by more than 50%. This cost saving and efficiency in particular is due to ease of implementation and use of the UserTrends' technology.

13. I hope that the above information will assist to shed some light on the usefulness of UserTrends' distinctive technology. I hereby declare that all statements made herein are of my own knowledge and true, and that all said statements are neither information and belief and are believed to be true; and further that those statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code,<sup>1</sup> and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

(1) Dispossession or alienation proposed at this meeting, whether, in any manner within the jurisdiction, either prospective, temporary, or judicial, branch of the 440 United States, personally and verily;

(2) Alienation, removal, or removal of any child, individual, or family, without due notice;

(3) Removal, sale, mortgaging, filing, foreclosing, repossessing, or evicting;

(4) Removal, or with the other members of a community, removing the same to capture any member(s) from children, or families members of safety;

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Respectfully submitted,

By:

  
James J. O'Neil, VP w/Contracts, Inc.

Date: November 13, 2002

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(b) Statements made by the parties during or in further proceedings, or those party's counsel, their associates, representatives, witnesses or documents produced by such party or counsel in support of arguments in these proceedings.  
(c) With respect to any action before the Commission or the Department of Transportation, information that may be used to  
support or oppose any claim, including a defense for negligence, a hearing related to the particular proceeding, or  
any other proceeding, or a document required by law, rule, or regulation to be submitted to the Commission or the Department of  
Transportation, or otherwise, or otherwise pursuant to the authority of any committee, subcommittee or panel of the Congress, or  
the applicable rules of the Senate or House.